

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2022 AUG -5 PM 1:42

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
FIREARMS AND AMMUNITION SEIZED )  
FROM DAVID HOYER SEPTEMBER 3, 2021, )  
CURRENTLY IN THE CUSTODY OF ATF, )  
BURLINGTON, VERMONT )  
)  
Defendants in rem. )

Case No:

5:22-cv-149

CLERK  
BY EM  
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**VERIFIED COMPLAINT FOR FORFEITURE IN REM**

Plaintiff, the United States of America (the “United States”), by and through its attorney, Nikolas P. Kerest, United States Attorney for the District of Vermont, brings this verified complaint and alleges, upon information and belief, as follows in accordance with Rule G(2) of the Supplemental Rules of the Federal Rules of Civil Procedure:

**NATURE OF THE ACTION**

1. This is a civil action *in rem* to forfeit the firearms and ammunition seized from David Hoyer on September 3, 2021, currently in the custody of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in Burlington, Vermont, (hereinafter “the Defendant Property”).

The Defendant Property is further described as:

Smith and Wesson, model M&P-15, 5.56 caliber rifle, serial number TT62921  
Mossberg, model M590A1, 12 gauge shotgun, serial number VO778214  
Glock, model 23, .40 caliber pistol serial number TSL477  
210 rounds Federal 12 gauge shotgun ammunition  
160 rounds Winchester .223 caliber rifle ammunition  
100 rounds Fiocchi .45 caliber pistol ammunition  
35 rounds Federal 9mm caliber ammunition

35 rounds Fiocchi 12 gauge shotgun ammunition  
7 rounds Federal .40 caliber ammunition  
6 rounds Hornady .40 caliber ammunition  
1 round Remington .40 caliber ammunition

2. The Defendant Property is subject to forfeiture pursuant to 18 U.S.C. § 924(d)(1) as firearms and ammunition involved in a knowing violation of 18 U.S.C. § 922(g)(4), which prohibits knowing possession of a firearm or ammunition by a person who has been “adjudicated as a mental defective.”

### **THE DEFENDANTS IN REM**

3. The Defendant Property consists of the following described property which was seized from David Hoyer by the Middlebury Police Department on September 3, 2021:

Smith and Wesson, model M&P-15, 5.56 caliber rifle, serial number TT62921  
Mossberg, model M590A1, 12 gauge shotgun, serial number VO778214  
Glock, model 23, .40 caliber pistol serial number TSL477  
210 rounds Federal 12 gauge shotgun ammunition  
160 rounds Winchester .223 caliber rifle ammunition  
100 rounds Fiocchi .45 caliber pistol ammunition  
35 rounds Federal 9mm caliber ammunition  
35 rounds Fiocchi 12 gauge shotgun ammunition  
7 rounds Federal .40 caliber ammunition  
6 rounds Hornady .40 caliber ammunition  
1 round Remington .40 caliber ammunition

4. On July 28, 2022, this Court (Hon. Kevin J. Doyle, U.S. Magistrate Judge) issued a civil seizure warrant authorizing the United States to take control of the Defendant Property, Docket Number 2:22-mc-104. On July 28, 2022, pursuant to the civil seizure warrant, ATF seized the Defendant Property. It is currently held at the ATF offices in Burlington, Vermont.

## **JURISDICTION AND VENUE**

5. Plaintiff brings this action *in rem* in its own right to forfeit and condemn the Defendant Property pursuant to 18 U.S.C. § 924(d)(1). This Court has jurisdiction over this action under 28 U.S.C. §§ 1345 and 1355.

6. Likewise, this District is a proper venue for this action pursuant to 28 U.S.C. §§ 1355(b)(1) and 1395(b) because the acts because giving rise to forfeiture occurred in this District and because the Defendant Property is located in this District.

## **STATEMENT OF FACTS**

### The Determination of Incompetence

7. In October 2011, David Hoyer was charged in the Vermont Superior Court, Windham County Division, with Misdemeanor Domestic Assault and Misdemeanor Unlawful Mischief Greater than \$250. In connection with the litigation of those charges, in December 2011, a motion was filed seeking a competency evaluation of David Hoyer. The court ordered the evaluation of Hoyer. Following completion of the evaluation, in March 2012, the court held a hearing on competency. According to the transcript of that hearing, the court stated that based on the findings and conclusions of the competency evaluator, the court would enter a finding of incompetency. The court further stated it would appoint a guardian ad litem for Hoyer. According to the docket sheet, the court entered a finding of incompetency and appointed a guardian ad litem following the hearing. The pending misdemeanor charges were subsequently dismissed.

8. Pursuant to 27 C.F.R. § 478.11, individuals who have been found incompetent to stand trial by a court are considered to be “adjudicated as a mental defective” for purposes of 18 U.S.C. § 922(g)(4).

### The Firearm Possession

9. On September 2, 2021, Middlebury Police responded to David Hoyer's Middlebury, Vermont apartment for a welfare check for Hoyer and his minor child based on a series of concerning social media posts by Hoyer. During the interaction between the police and Hoyer, Hoyer stated that he had a number of firearms, including handguns, shotguns and rifles, and had purchased an AR-15 rifle earlier in the day.

10. Following this incident, the Vermont Superior Court, Addison Unit, issued an extreme risk protection order requiring Hoyer to surrender all firearms and ammunition in his possession at his Middlebury apartment to the Middlebury Police Department.

11. Pursuant to that order, Middlebury Police seized the Defendant Property on September 3, 2021.

12. The Defendant Property was maintained at the Middlebury Police Department until transfer to the Burlington, Vermont ATF Field Office on July 27, 2022.

13. On July 28, 2022, ATF formally seized the Defendant Property pursuant to a civil seizure warrant.

### Interstate Nexus Determination

14. As part of this investigation, a designated ATF interstate nexus expert reviewed the firearms that comprise part of the Defendant Property and determined they were manufactured outside the State of Vermont, and by their presence in Vermont, must have travelled across state lines affecting interstate commerce. Because very little ammunition is manufactured inside the State of Vermont, by its presence in Vermont, the ammunition that is part of the Defendant Property also likely travelled across state lines affecting interstate commerce.

**CLAIM FOR RELIEF**

15. Pursuant to 18 U.S.C. § 922(g)(4), “[i]t shall be unlawful for any person who has been adjudicated as a mental defective... to possess in or affecting commerce, any firearm or ammunition.” Pursuant to 18 U.S.C. § 924(d)(1), any firearm and ammunition involved or used in any knowing violation of 18 U.S.C. § 922(g)(4) shall be subject to seizure and forfeiture.

16. By reason of the facts set forth and incorporated herein, the Defendant Property is properly condemned as forfeited to the United States of America pursuant to 18 U.S.C. § 924(d)(1).

**RELIEF REQUESTED**

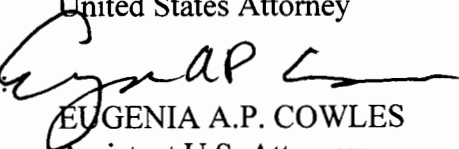
Wherefore, the Plaintiff United States respectfully requests that: (1) notice of this action be given to all persons known or thought to have an interest in or right against the Defendant Property; (2) that the Defendant Property be forfeited and condemned to the United States of America; and (3) that the Court award the Plaintiff such other and further relief as this Court deems proper and just.

Dated at Burlington, in the District of Vermont, this 5<sup>th</sup> day of August, 2022.

Respectfully submitted,

NIKOLAS P. KEREST  
United States Attorney

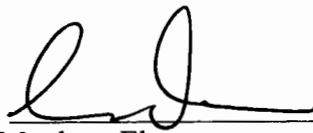
By:

  
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**VERIFICATION**

I, Matthew Ekstrom, a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives, hereby verify under penalty of perjury that I have read the foregoing complaint and that the contents thereof are true and correct to the best of my knowledge, information, and belief.

Dated at Burlington, in the District of Vermont, this 5<sup>th</sup> day of August, 2022.

A handwritten signature in black ink, appearing to read 'M. Ekstrom', is written over a horizontal line.

Matthew Ekstrom  
Special Agent, ATF